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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR:	ATTORNEY DOCKET NO.
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09/250,769      02/15/99      OSTLUND      R      P03496US1

EDMUND J SEASE  
801 GRAND AVENUE  
SUITE 3200  
DES MOINES IA 50209

HM12/0526

EXAMINER

JORDAN, K

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

05/26/99

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/250,769**

Applicant(s)  
**Ostlund**

Examiner  
**Kimberly Jordan**

Group Art Unit  
**1614**



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-16 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-16 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

KIMBERLY JORDAN  
PRIMARY EXAMINER  
GROUP 1200

1610

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 1-16 are presented for examination.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 14, the phrase "including" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Straub (AA).


The claims appear to be drawn to a composition and method of lowering cholesterol absorption by administering a composition or food product containing sitostanol and an alkali metal reaction product of lactic acid and a fatty acid as an emulsifier. Straub teaches sitostanol to be useful in lowering cholesterol absorption (see abstract). Straub also teaches that sitostanol may be formulated with emulsifiers such as sodium lauryl sulfate (see column 6, lines 3-22). The claims differ from the cited reference in claiming the lactic acid esters of the fatty acid salts. To substitute the lactic acid esters would have been obvious because fatty acid salts of lactic acid esters such as sodium stearyl-2-lactylate are well known emulsifiers and would be expected to work as well as sodium lauryl sulfate. Furthermore, the sodium stearyl-2-lactylate has not been

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demonstrated to produce unexpected results in comparison to the closest prior art (i.e., sodium lauryl sulfate). Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited reference.

No claims are allowed.

Any inquiry concerning this communication should be directed to Kimberly Jordan at telephone number (703) 308-4611.

  
KIMBERLY JORDAN  
PRIMARY EXAMINER  
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May 24, 1999